

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

BLUE SPIKE, LLC,  
*Plaintiff,*

V.

TEXAS INSTRUMENTS, INC.  
*Defendant.*

Civil Action No. 6:12-CV-499-LED

(LEAD CASE)

## JURY TRIAL DEMANDED

BLUE SPIKE, LLC,  
*Plaintiff,*

V.

IMAGEWARE SYSTEMS, INC.,  
*Defendant.*

Civil Action No. 6:12-CV-688-LED

(EXCEPT FOR VENUE, CONSOLIDATED  
WITH 6:12-CV-499)

## JURY TRIAL DEMANDED

**DECLARATION OF WAYNE G. WETHERELL IN SUPPORT OF THE MOTION BY  
DEFENDANT IMAGEWARE SYSTEMS, INC. TO TRANSFER THIS ACTION TO THE  
SOUTHERN DISTRICT OF CALIFORNIA UNDER 28 U.S.C. 1404(a)**

I, Wayne G. Wetherell, declare as follows:

1. I am the Chief Financial Officer of Defendant ImageWare Systems, Inc. ("IWS").

I have personal knowledge of the following and, if called upon to do so, I could and would testify competently thereto.

2. IWS designs, develops and sells biometrically enabled, software-based identity management solutions to governments, law enforcement, commercial, transportation and aviation entities for identity authentication and verification purposes. Based in San Diego, California, IWS is a small company with 50 full-time employees.

3. IWS has no offices, employees, officers, directors, representatives or agents for service of process in Texas. All IWS employees with knowledge of the design, development, operation, sales and marketing of the accused products live or work in San Diego, California, with the sole exception of IWS' Chief Technical Officer, who lives and works in the Portland, Oregon area but who frequently travels to San Diego on company business. All documents and electronically stored information regarding the design, development, operation, sales and marketing of IWS' accused products are located in San Diego, California. No documents or electronically stored information relevant to this case are located in Texas.

4. IWS has no offices, employees, real property, leaseholds, assets, documents, bank accounts, or agents for service of process in Texas.

5. IWS does not file tax returns or filings with any administrative agencies in Texas. IWS is not registered to do business in Texas.

6. IWS has no United States government or state contracts with or associated with Texas.

7. IWS has only 6 customers in Texas and 1 customer in this District—The City of Plano. Five of those customers (including the City of Plano) have each generated sales of \$5,800 or less in 2012. Sales to The City of Plano in 2012 were only \$1,090. The sixth customer (CompuCom, located in Dallas, Texas) has generated approximately \$439,000 in sales. However, sales to CompuCom are the result of IWS' software licenses delivered and deployed to

Los Angeles World Airports in Los Angeles, California (not Texas). LAWA requires any and all licenses to be invoiced to CompuCom, even though IWS' software sold to CompuCom is ultimately delivered to and deployed in Los Angeles. IWS does not anticipate selling any additional or future licenses or making any other sales to CompuCom in the future.

8. Transfer of this case to California would be more convenient for at least one third party with knowledge of the operation of certain biometric algorithms in IWS' accused products, NEC Solutions (America), Inc., which is located in Rancho Cordova, California, and which provides IWS with certain algorithms used in IWS' accused products.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 2<sup>th</sup> day of January, 2013 at San Diego, California.

By:   
Wayne G. Wetherell